

ORDINANCE NO. 2668-06

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE III, "ZONING REGULATIONS" SO AS TO ADOPT WITHIN SECTION 58-85 "ZONING CHANGES AND AMENDMENTS" AND WITHIN SECTION 58-86 "CONDITIONAL USES", REVISED LEGAL ADVERTISEMENT AND PUBLIC NOTICE REQUIREMENTS AND TO INSTITUTE NEW APPLICATION REVIEW PROCEDURES AND SUBMITTAL REQUIREMENTS FOR AMENDMENTS TO THE OFFICIAL ZONING MAP, CONDITIONAL USES AND PLANNED DEVELOPMENT REQUESTS WITHIN THE CITY OF WINTER PARK, PROVIDING STANDARDS FOR SIGNIFICANT CHANGES TO APPROVED PLANS, PROVIDING AN EFFECTIVE DATE.

(ZTA 2:06)

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:

SECTION 1. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by amending Section 58-85 "Zoning Changes and Amendments", to read as follows:

Sec. 58-85. Zoning changes and amendments, public notice requirements and procedures for zoning amendments and conditional uses.

The regulations, restrictions, and district boundaries set out in this article may from time to time be amended, supplemented, changed or repealed. The procedure shall be as follows:

(1) A zoning text or map amendment may be proposed by the city commission or the planning and zoning commission. A zoning map amendment may be proposed by any individual, corporation, partnership or other entity having a bona-fide interest in such property either by ownership or by standing under a contract to purchase such land. All zoning text or map amendments must be made by ordinance. Applications shall be submitted on a standard application form accompanied by all pertinent information which may be required for proper consideration of the matter, along with payment of fees and charges as established by the city commission. Applicants shall include prospective plans indicating the desired development scenario proposed as a result of an approval per the plan submission requirements established for conditional uses. Applicants shall also indicate if the proposed development includes a request for Community Redevelopment Area (CRA) funds, including the amount requested and the purpose of such funding.

(2) All proposed zoning text or map amendments shall be submitted to the planning and zoning commission for study and recommendation. The commission shall study such proposals to determine:

- a. The need and justification for the change;
- b. When pertaining to the rezoning of land, the effect of the change, if any, on the particular property and the surrounding properties;
- c. When pertaining to the rezoning of land, the amount of undeveloped land in the general area and in the city having the same classification as that requested; and
- d. The relationship of the proposed amendment to the goals, policies, and text of the city's comprehensive plan, with appropriate consideration as to whether the proposed change will further, or at least not be contrary to, the purpose of this zoning ordinance and the general planning program.

(3) No recommendation for amendment to this zoning ordinance shall be made by the planning and zoning commission until and unless a public hearing has been held. Before any public hearing is held by the planning and zoning commission under the provisions of this section for zoning map amendment or for review of any conditional use request, notice shall be provided based upon the type and size of the request as detailed below. In cases where requests are not specifically indicated in this section, the planning and community development director shall determine the most appropriate level of public notice. Regardless of the size of the project, when any proposed amendment to the official zoning map or conditional use involves a project that is requesting Community Redevelopment Area (CRA) funds, then a statement to that effect specifying the amount requested and the purpose shall be included in the notice required for the project.

a. For any proposed conditional uses involving drive-in business components, two story buildings in the O-2 district of less than 10,000 gross square feet above grade, residential projects of three units or less, conditional use for restaurant or liquor licenses, new or used car sales, vehicle repair or service, parking lots or recreational facilities, said notice of the hearing shall be published in a newspaper of general circulation within the city at least fifteen days in advance of the hearing; written notice of the time and place of such meeting and the proposed action to be taken shall be posted upon the property and mailed to all owners of record of property within 500 feet of the property requested for rezoning at least 15 days prior to the public hearing. The public notice posted on the property shall be erected to be in full view of the general public on each street side of said land and shall be erected by the applicant.

b. For any proposed amendment to the official zoning map for land of less than one acre and for conditional uses involving church expansions residential projects of four to twenty-five units, buildings over 10,000 gross square feet and less than 25,000 gross square feet above grade, day care, nursing homes, said notice of the hearing shall be published in a newspaper of general circulation within the city at least fifteen days in advance of the hearing; written notice of the time and place of such meeting and the proposed action to be taken shall be posted upon the property and mailed to all owners of record of property within 1,500 feet of the property requested for rezoning at least 15 days prior to the public hearing. The public notice posted on the property shall be erected to be in full view of the general public on each street side of said land and shall be erected by the applicant.

c. For any proposed amendment to the official zoning map for land of more than one acre and for conditional uses involving residential projects with over twenty-five units, buildings over 25,000 gross square feet above grade and third or fourth floor projects in the central

business district, said notice of the hearing shall be published in a newspaper of general circulation within the city at least 30 days in advance of the hearing; written notice of the time and place of such meeting and the proposed action to be taken shall be posted upon the property and mailed to all households as determined from the listing of utility billing addresses within the entire city limits at least 30 days prior to the public hearing. The public notice posted on the property shall be erected to be in full view of the general public on each street side of said land and shall be erected by the applicant. Any public notice required after the initial public hearing by the planning and zoning commission due to tabling, continuance, postponement or any other action by the planning commission shall revert to the 15 day notice unless otherwise directed by the planning commission so as to allow for requests to be heard at the next regular or special meeting of the planning and zoning commission.

d. Any proposed zoning text amendment proposed by the planning and zoning commission or city commission shall include notice as deemed appropriate by that commission given the nature and character of the amendment.

e. Said postings of properties shall remain in place through the public hearing process. The city shall monitor this posting and provide replacements for any postings lost due to weather, vandalism, etc. However, the absence of a posting due to these conditions beyond the control of the city or the applicant shall not constitute a breach of this requirement provided a good faith effort is made to comply.

(5) The planning and zoning commission following their public hearing may recommend approval, approval with conditions, preliminary approval, denial or submit such request with no recommendation to the city commission in the case of a tie vote. However, if the planning and zoning commission makes no recommendation following two advertised public hearings from the date of the initial public notice, it shall be considered submitted to the city commission without recommendation on the proposed zoning text or map amendment. This provision shall not include any public hearing during which the applicant requests that their application be tabled, postponed or continued or any public hearing where the planning commission deems that the plans submitted do not meet the application submission requirements, notice is deemed insufficient or any other procedural deficiency.

(6) Upon the filing of the recommendations and report by the planning and zoning commission or upon failure to do so with respect to any proposed zoning text of map, the city commission shall proceed to hold a public hearing in relation thereto, giving at least 15 days notice of time and place of such hearing, which notice shall first be published in a newspaper having a general circulation in the City of Winter Park, Florida.

(7) In case of a recommendation of denial by the planning and zoning commission, or if a protest against such proposed zoning text or map amendment shall be presented in writing to the city clerk, at least five working days prior to the public hearing, duly signed by the owners of 20 percent or more of either the area of the lots included in such proposed change, or those within a 500-foot radius of the subject property, such amendments shall not become effective except by the favorable vote of four members of the city commission. In cases when the planning and zoning commission recommends approval of a zoning

map amendment on a lesser portion of the property than originally requested or imposes conditions upon or limitations upon a recommendation for approval reducing the intensity or density of use of said property, it shall require the favorable vote of four members of the city commission to adopt such zoning map amendment to a greater portion of the property or to increase the density or intensity of use of said property above that recommended by the planning and zoning commission.

(8) If a planning and zoning commission recommendation for change is not acted upon by the city commission within 90 days of the date of its receipt by the city commission, the petition upon which the recommendation is based shall be deemed to have been denied.

(9) Whenever the city commission has, by amendment, changed the zoning classification of property, the planning and zoning commission shall not consider any petition for the rezoning of any part or all of the same property for a period of one year from the effective date of the amendatory ordinance.

Whenever the planning and zoning commission has taken action to recommend the denial of a petition for the rezoning of property and that recommendation has been approved by the city commission, or when the planning and zoning commission has recommended granting a petition for the rezoning of property and the city commission has reversed that recommendation and denied the petition, the planning and zoning commission shall not:

a. Consider any further petition for the same rezoning of any part or all of the same property for a period of one year from date of such action by the city commission;

b. Consider a petition for any other kind of rezoning on any part or all of the same property of a period of one year from the date of such action by the city commission.

The time limits of this subsection may be waived by the affirmative vote of four members of the city commission, when such action is deemed necessary to prevent injustice or to facilitate the proper development of the city.

(10) The decision of the planning and zoning commission and the city commission may be made to affirm or deny the original request of the applicant or it may modify the request to approve a portion of the request or alternative version of the zoning text or map amendment. The planning and zoning commission may recommend and the city commission may impose conditions upon the approval of a zoning amendment. Such conditions may not restrict the range of permitted uses within a zoning district but such conditions may restrict or impose requirements upon the development or use of such land such as limitations on building size, height, setbacks or other site design or building design or use features.

(11) Whenever the secretary to the planning and zoning commission has received a written request for a continuation, delay or postponement of a public hearing from an applicant after such public hearing has been duly advertised, the planning and zoning commission may grant the applicant's request. The commission shall reschedule the public hearing to any future scheduled meeting within the following six months; such rescheduling shall meet with the approval of the applicant. The applicant shall pay a second filing fee for rezoning to cover necessary administration and other expenses. If, after the second public hearing has been duly advertised and the applicant again requests a delay, postponement or continuation, or if the applicant does not agree with the rescheduling of the public hearing within the six-month period, the planning and zoning commission shall duly act to

deny the request of the applicant, and a new request for rezoning of this property will not be accepted for a period of one year from the date of the second scheduled public hearing.

(12) Preliminary approvals may be recommended by the planning and zoning commission and may be approved by the city commission. Preliminary approvals are the first step of a two-step approval process. The second step requires the resubmission of additional plan documents or other relevant materials as may be deemed necessary to the planning and zoning commission and city commission for subsequent public hearing review and recommendation by the planning commission and action by the city commission in addition to any other requirements established by this code, applicable law, or as requested by the city commission. The city commission may at its choosing delegate the subsequent review and approval authority to the planning and zoning commission. The initial preliminary approvals establish a contractual obligation for the city to issue development orders and building permits for the development of projects that are consistent with the terms and conditions proposed for the rezoning or conditional use request and with the size, height, character and parameters of the types of uses detailed in the plan documents accompanying the zoning amendment or as part of a conditional use request. Preliminary approvals and the accompanying development agreements do not fix the cost of projects as the subsequent approval of additional plan submittals and documents by the planning and zoning commission and/or the city commission may alter costs associated with the exterior architectural facades of buildings, storm water retention facilities, service facilities, landscaping, signage, walls or fences, etc. The development agreement incorporates the plan submissions, written application materials and verbal representations of the applicant as well as including any special conditions and restrictions imposed by the city commission, upon which the approval may be based. A development agreement may be approved by the city commission coincident with the initial approval of the rezoning or conditional use or may be done at a later time, following a subsequent public hearing. Development agreements may or may not be approved pursuant to F.S., Chapter 163.

(13) In cases where preliminary approvals are granted for amendments to the zoning text or official map, the effective date of such ordinance shall be upon the date of execution of a development agreement following the subsequent review and approval by the city commission, following recommendation from the planning and zoning commission of the additional plan documents or other relevant materials as may be deemed necessary as exhibits for the development agreement.

(14) Development agreements shall be prepared by the City of Winter Park pursuant to the terms and conditions outlined by the planning and zoning commission and the city commission. Applicants shall be required to reimburse the city for actual city staff and city attorney expenses, and for any extraordinary costs, including but not limited to attorneys fees and costs incurred in litigation related to any approval or related to a denial if the city is the prevailing party.

(15) Whenever an applicant submits plans as required by this code, only the plans submitted to the planning commission members prior to the public hearing for their review together with a staff report analysis and other pertinent information shall be the basis for action by the planning and zoning commission. If those plans are substantially modified then such application shall be postponed and re-advertised for a subsequent meeting.

Similarly, when the planning and zoning commission makes a recommendation on an application pursuant to specific plans, and those plans are substantially modified for submission to the city commission public hearing, then the modified plans shall first be reviewed by the planning and zoning commission for recommendation before they are considered by the city commission for approval. The city commission shall not act on any application containing modified plans but shall refer the modified plans back to the planning and zoning commission, for subsequent review and recommendation unless such changes are in response to specific conditions of approval made by the planning and zoning commission.

(16) Whenever an applicant requests a work session or pre-application meeting before the planning and zoning commission or city commission or both combined commissions, such plans shall be submitted at least two weeks prior to such meeting and the planning staff shall prepare for review by such commissions, a preliminary report outlining the extent of the zoning variances and other issues that such application will entail.

(17) Significant changes to buildings or approved plans. There are two times when plan documents are reviewed following a preliminary approval or following a final approval with respect to a determination of significant change. The first time is following a preliminary approval when plan documents are submitted for final approval as required by this code. The second time is when plan documents are submitted for site development and building permits. In the first situation, the planning staff, based upon the criteria set forth below shall make a staff recommendation indicating the facts and conditions as they understand them to be. The planning and zoning commission shall then, following the required public hearing and based upon the criteria set forth below, make a recommendation either that:

- (a) No significant changes have been made, or
- (b) That significant changes have been made but those changes are acceptable to the planning and zoning commission or
- (c) That significant changes have been made which are not acceptable to the planning and zoning commission in which case the developer must amend such plan documents and re-submit such plans for final approval in order to build the project in conformance with the parameters of the original preliminary approval.

This action by the planning and zoning commission is a recommendation. The city commission shall then, following the required public hearing, make the final decision that either

- (a) No significant changes have been made, or
- (b) That significant changes have been made but those changes are acceptable to the city commission or
- (c) That significant changes have been made which are not acceptable to the city commission in which case the developer must amend such plan documents and re-submit such plans for final approval in order to build the project in conformance with the original parameters of the preliminary approval.

In the second instance, the planning and development director must insure that the plan documents submitted for site development and building permits are consistent with the plan documents given final approval by the city commission. Any such determination of significant change by the planning and community development director in this instance

may be appealed to the city commission following recommendation from the planning and zoning commission. In order to determine whether a significant change shall be deemed to occur, the following criteria shall be used.

- (1) When there is an increase in the height of a building of more than one foot; or
- (2) When there is an increase in the square footage of a proposed building of more than 250 square feet above grade; or
- (3) When there is an increase in the impervious lot coverage of more than 500 square feet; or
- (4) When there is a change in the architectural style of the building; or
- (5) When there is a major shift or relocation of the site and floor plan(s) or the distribution of uses within the building or major shift or relocation in the features of building location, storm water retention, parking area and/or driveways; or
- (6) When additional variances are requested that have not previously been made part of the public record in the review by the planning and zoning commission and/or the city commission; or
- (7) When the planning and community development director believe a material change has been made in a plan detail that was critical to the consensus or decision made by the board or commission.

SECTION 2. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by amending Section 58-86 "Conditional uses", subsections (a), (e) and (f) to read as follows and adopting a new subsection (g) as follows and renumbering the subsections following (g) correspondingly:

Section 58-86. Conditional Uses.

(a) Within this article, various types of land uses, various types of structures, various types of businesses, certain types or sizes of buildings or licenses have been deemed to require a conditional use approval prior to beginning operation or development. These conditional use approval requirements are generally to assure that such activities and projects are in conformance with the comprehensive plan policies and that they do not result in significant adverse effects to adjacent properties and are compatible with the type and size of buildings and the character of the surrounding area. Aside from the ability to deny such conditional uses or impose conditions upon such conditional use approvals in order to achieve these objectives, the city may also reduce the size, height and intensity of such buildings, structures and uses of land below that normally permitted within the zoning district in order to insure that these objectives are achieved.

(e) Preliminary approvals may be recommended by the planning and zoning commission and may be approved by the city commission. A preliminary approval is the first step of a two-step approval process. The second step requires the resubmission of additional plan documents or other relevant materials as may be deemed necessary to the planning and zoning commission and action by the city commission for subsequent public hearing review and recommendation by the planning commission and city commission in addition to any other requirements established by this code, applicable law, or requested by the city commission. The city commission may at its choosing delegate the subsequent review and approval authority to the planning and zoning commission. The initial

preliminary approvals establish a contractual obligation for the city to issue development orders and building permits for the development of projects that are consistent with the terms and conditions proposed for the rezoning or conditional use request and with the size, height, character and parameters of the types of uses detailed in the plan documents accompanying the zoning amendment or as part of a conditional use request. Preliminary approvals and the accompanying development agreements do not fix the cost of projects as the subsequent approval of additional plan submittals and documents by the planning and zoning commission and/or the city commission may alter costs associated with the exterior architectural facades of buildings, storm water retention facilities, service facilities, landscaping, signage, walls or fences, etc. The development agreement incorporates the plan submissions, written application materials and verbal representations of the applicant as well as including any special conditions and restrictions imposed by the city commission, upon which the approval may be based. A development agreement may be approved by the city commission coincident with the initial approval of the conditional use or may be done at a later time, following a subsequent public hearing. Development agreements may or may not be approved pursuant to F.S., Chapter 163. Development agreements shall be prepared by the City of Winter Park pursuant to the terms and conditions outlined by the planning and zoning commission and the city commission. Applicants shall be required to reimburse the city for actual city staff and city attorney expenses.

(f) Whenever an applicant submits plans as required by this code, only the plans submitted to the planning commission members prior to the public hearing for their review together with a staff report analysis and other pertinent information shall be the basis for action by the planning and zoning commission. If those plans are substantially modified then such application shall be postponed and re-advertised for a subsequent meeting. Similarly, when the planning and zoning commission makes a recommendation on an application pursuant to specific plans, and those plans are substantially modified, then the modified plans shall first be reviewed by the planning and zoning commission before they are considered by the city commission for approval. The city commission shall not act on any application containing modified plans but shall refer the modified plans back to the planning and zoning commission, for subsequent review and recommendation unless such changes are in response to specific conditions of approval made by the planning and zoning commission.

(g) Significant changes to buildings or approved plans. There are two times when plan documents are reviewed following a preliminary approval or following a final approval with respect to a determination of significant change. The first time is following a preliminary approval when plan documents are submitted for final approval as required by this code. The second time is when plan documents are submitted for site development and building permits. In the first situation, the planning staff, based upon the criteria set forth below shall make a staff recommendation indicating the facts and conditions as they understand them to be. The planning and zoning commission shall then, following the required public hearing and based upon the criteria set forth below, make a recommendation either that:

- (a) No significant changes have been made, or
- (b) That significant changes have been made but those changes are acceptable to the planning and zoning commission, or
- (c) That significant changes have been made which are not acceptable to the planning and zoning commission in which case the developer must amend such

plan documents and re-submit such plans for final approval in order to build the project in conformance with the parameters of the original preliminary approval.

This action by the planning and zoning commission is a recommendation. The city commission shall then, following the required public hearing, make the final decision that either:

- (a) No significant changes have been made, or
- (b) That significant changes have been made but those changes are acceptable to the city commission, or
- (c) That significant changes have been made which are not acceptable to the city commission in which case the developer must amend such plan documents and re-submit such plans for final approval in order to build the project in conformance with the original parameters of the preliminary approval.

In the second instance, the planning and development director must insure that the plan documents submitted for site development and building permits are consistent with the plan documents given final approval by the city commission. Any such determination of significant change by the planning and community development director in this instance may be appealed to the city commission following recommendation from the planning and zoning commission. In order to determine whether a significant change shall be deemed to occur, the following criteria shall be used:

- (1) When there is an increase in the height of a building of more than one foot; or
- (2) When there is an increase in the square footage of a proposed building of more than 250 square feet above grade; or
- (3) When there is an increase in the impervious lot coverage of more than 500 square feet; or
- (4) When there is a change in the architectural style of the building; or
- (5) When there is a major shift or relocation of the site and floor plan(s) or the distribution of uses within the building or major shift or relocation in the features of building location, storm water retention, parking area and/or driveways; or
- (6) When additional variances are requested that have not previously been made part of the public record in the review by the planning and zoning commission and/or the city commission; or
- (7) When the planning and community development director believe a material change has been made in a plan detail that was critical to the consensus or decision made by the board or commission.

SECTION 3. That Chapter 58 "Land Development Code", Article III "Zoning" of the Code of Ordinances is hereby amended and modified by adding to Section 58-86 "Conditional uses", a new subsection (g) (7) to read as follows and re-numbering the existing (g) (7) "Exceptions" to (g) (8)

Section 58-86. Conditional Uses

- (g) Conditional use plan review requirements

(7) For projects meeting the requirements for city-wide public notice, applicants shall also submit at the time of application fully rendered digital 3-D digital architectural perspective images and elevations that show all sides of the proposed building(s), parking areas, parking structures and any other site improvement. Additionally, all adjacent buildings and site improvements within 100 feet of the proposed site should be included within the digital 3-D images for review of the context with the immediately surrounding properties.

SECTION 4. All ordinances or portions or ordinances in conflict herewith are hereby repealed.

SECTION 5. This ordinance shall become effective immediately upon its final passage and adoption. Applications received prior to the effective date of this ordinance shall utilize the public notice procedures in effect prior to the adoption of this ordinance. Should such applications be tabled or postponed by action of the City, the public notice requirements in effect prior to this ordinance shall govern throughout the duration of the public hearing review required by the zoning code.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this 8th day of May, 2006.



Mayor David C. Strong

ATTEST:



City Clerk